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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2011-0728; FRL-9900-65-Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards; Prevention of Significant Deterioration; Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) submissions from the State of Wyoming to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for particulate matter less than or equal to 2.5 micrometers (µm) in diameter (PM_{2.5}) on July 18, 1997 and on October 17, 2006. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIP to ensure that they meet the requirements of the “infrastructure elements” necessary to implement the new or revised NAAQS. Wyoming provided infrastructure submissions for the 1997 and 2006 PM_{2.5} NAAQS on March 26, 2008 and August 19, 2011, respectively. EPA does not propose to act on certain portions of the submissions for the 2006 PM_{2.5} NAAQS that are intended to meet requirements related to interstate transport of air pollution. EPA will act on the remainder of the submissions in a separate action.

DATES: Written comments must be received on or before **[Insert date 21 days after**

publication in the FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2011-0728, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: ayala.kathy@epa.gov
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2011-0728. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your

comment. If you send an e-mail comment directly to EPA, without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to section I, General Information, of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Ayala, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. 303-312-6142, ayala.kathy@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials CBI mean or refer to confidential business information.
- (iii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iv) The initials FIP mean or refer to a Federal Implementation Plan.
- (v) The initials GHG mean or refer to greenhouse gases.
- (vi) The initials NAAQS mean or refer to national ambient air quality standards.
- (vii) The initials NO_x mean or refer to nitrogen oxides.
- (viii) The initials NSR mean or refer to new source review.
- (ix) The initials PM mean or refer to particulate matter.
- (x) The initials PM_{2.5} mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).
- (xi) The initials ppm mean or refer to parts per million.
- (xii) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (xiii) The initials SIP mean or refer to State Implementation Plan.

- (xiv) The initials SSM mean or refer to start-up, shutdown, or malfunction.
- (xv) The initials WAQSR mean or refer to the Wyoming Air Quality Standards and Regulation.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:
- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register, date, and page number);
 - Follow directions and organize your comments;
 - Explain why you agree or disagree;
 - Suggest alternatives and substitute language for your requested changes;
 - Describe any assumptions and provide any technical information and/or data that you used;
 - If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
 - Provide specific examples to illustrate your concerns, and suggest alternatives;
 - Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
 - Make sure to submit your comments by the comment period deadline identified.

II. Background

On July 18, 1997, EPA promulgated new NAAQS for PM_{2.5}. Two new PM_{2.5} standards were added, set at 15 µg/m³, based on the three-year average of annual arithmetic mean PM_{2.5} concentration from single or multiple community-oriented monitors, and 65 µg/m³, based on the three-year average of the 98th percentile of 24-hour PM_{2.5} concentrations at each population-oriented monitor within an area (62 FR 38652).

On October 17, 2006, EPA promulgated a revised NAAQS for PM_{2.5}, tightening the level of the 24-hour PM_{2.5} standard to 35 µg/m³ and retaining the level of the annual PM_{2.5} standard at

15 $\mu\text{g}/\text{m}^3$. EPA also retained the 24-hour PM_{10} and revoked the annual PM_{10} standard (71 FR 61144). By statute, SIPs meeting the requirements of CAA sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several “infrastructure elements,” listed in section 110(a)(2).

CAA section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state’s existing SIP already contains. In the case of the 1997 and 2006 $\text{PM}_{2.5}$ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

III. What is the Scope of this Rulemaking?

This rulemaking will not cover four substantive issues that are not integral to acting on a state’s infrastructure SIP submission: (1) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources, that may be contrary to the CAA and EPA’s policies addressing such excess emissions (“SSM”); (2) existing provisions related to “director’s variance” or “director’s discretion” that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (“director’s discretion”); (3) existing provisions for minor source

NSR programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and (4) existing provisions for prevention of significant deterioration (PSD) programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Instead, EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA's July 13, 2011 final rule entitled, "Infrastructure SIP Requirements for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards" in the section entitled, "What is the scope of this final rulemaking?" (see 76 FR 41075 at 41076 – 41079).

IV. What Infrastructure Elements are Required Under Sections 110(a)(1) and (2)?

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.

- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

Element 110(a)(2)(D)(i)(I), Interstate transport of pollutants which contribute significantly to nonattainment in, or interfere with maintenance by, any other state will be acted upon in a separate action. EPA will also act on the visibility element of section 110(a)(2)(D)(i)(II) in a separate action.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (1) section 110(a)(2)(C) to the extent it refers to permit programs (known as “nonattainment new source review (NSR)”) required under part D, and (2) section 110(a)(2)(I), pertaining to the

nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

V. How Did Wyoming Address the Infrastructure Elements of Sections 110(a)(1) and (2)?

1. **Emission limits and other control measures:** Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

a. **Wyoming's response to this requirement:** The State's March 26, 2008 submission for the 1997 PM_{2.5} infrastructure requirements and August 19, 2011 submission for the 2006 PM_{2.5} infrastructure requirements cite three non-regulatory documents (e.g., Control Strategy, Source Surveillance, and Compliance Schedule) which were approved by EPA on May 31, 1972 (37 FR 10842). The State's submissions also cite regulatory documents included in the Wyoming Air Quality Standards and Regulation (WAQSR) included in Chapters 1, 3, 4, 8, 10 and 13.

b. **EPA analysis:** Wyoming's SIP meets the requirements of CAA section 110(a)(2)(A) for the 1997 and 2006 PM_{2.5} NAAQS, subject to the following clarifications. First, Wyoming has no areas designated as nonattainment for the 1997 and 2006 PM_{2.5} NAAQS and, therefore, is not required to establish enforceable emission limitations or other emission reduction measures to attain the 1997 and 2006 PM_{2.5} NAAQS. The SIP provisions cited by Wyoming include emissions standards for particulate matter (WAQSR Chapter 2, Section 2). Wyoming also

regulates emissions of PM_{2.5} and its precursors through the State's approved PSD and minor NSR programs. This is sufficient to meet the requirements of 110(a)(2)(A) for the 1997 and 2006 PM_{2.5} NAAQS.

Second, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, November 24, 1987), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, EPA is also not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance¹ and the Agency is addressing such state regulations separately (78 FR 12460, February 22, 2013).

2. **Ambient air quality monitoring/data system:** Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to "(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator."

a. **Wyoming's response to this requirement:** The State's submissions for the 1997 and

¹ Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to EPA Air Division Directors, "State Implementation Plans (SIPs): Policy Regarding Emissions During Malfunctions, Startup, and Shutdown." (September 20, 1999).

2006 PM_{2.5} infrastructure requirements cite three non-regulatory documents (e.g., Air Quality Surveillance, Air Quality Surveillance Network, and Implementation Plan for Lead). The State's submissions also cite regulatory documents included in Chapters 1 and 2 of the WAQSR.

b. **EPA analysis:** Wyoming's air monitoring program and data systems meet the requirements of CAA section 110(a)(2)(B) for the 1997 and 2006 PM_{2.5} NAAQS. The Wyoming Ambient Air Monitoring Annual Network Plan for 2011 was approved by EPA Region 8 on February 29, 2012.

3. **Program for enforcement of control measures:** Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D of the Act.

a. **Wyoming's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite four non-regulatory documents (e.g., Legal Authority, Source Surveillance, Review of New Sources and Modifications, and March 3, 2008 memorandum from Cynthia Cody [EPA Region 8, Air Quality Planning Unit Chief]). The State's submissions also cite regulatory documents included in the WAQSR Chapter 6.

b. **EPA analysis:** To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 1997 and 2006 PM_{2.5} NAAQS. As explained above, in this action EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program

required by part D of the Act. EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

PSD Requirements

Wyoming has a SIP-approved PSD program that meets the general requirements of part C of the Act (44 FR 51977, September 6, 1979). To satisfy the particular requirements of section 110(a)(2)(C), states should have a PSD program that applies to all regulated NSR pollutants, including greenhouse gases (GHGs). See 40 CFR 51.166(b)(48) and (b)(49). The PSD program should reflect current requirements for these pollutants. In particular, for three pollutants - ozone, PM_{2.5} and GHGs - there are additional regulatory requirements (set out in portions of 40 CFR 51.166) that we consider in evaluating Wyoming's PSD program.

On July 25, 2011 (76 FR 44265), we approved a revision to the Wyoming PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated on November 29, 2005 (70 FR 71612). As a result, the approved Wyoming PSD program meets the current requirements for ozone.

With respect to GHGs, on June 24, 2013 (78 FR 37752) EPA proposed to approve a submittal that revises Wyoming's PSD program to regulate GHGs and to adopt the thresholds set out in EPA's June 3, 2010 "PSD and Title V Greenhouse Gas Tailoring Final Rule" (75 FR 31514). In that proposal, EPA accordingly also proposed to rescind the Federal Implementation Plan (FIP) for GHG permitting in Wyoming that EPA had promulgated on December 30, 2010 (75 FR 82246). With EPA's proposed approval of the relevant portions of the revisions to Wyoming's PSD program and rescission of the FIP, Wyoming's PSD program will meet current requirements for GHGs.

Finally, we evaluate the PSD program with respect to current requirements for PM_{2.5}. In particular, on May 16, 2008, EPA promulgated the rule, “Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) and on October 20, 2010 EPA promulgated the rule, “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (75 FR 64864). EPA regards adoption of these PM_{2.5} rules as a necessary requirement when assessing a PSD program for the purposes of element (C).

On January 4, 2013, the U.S. Court of Appeals, in Natural Resources Defense Council v. EPA, 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded EPA’s 2007 and 2008 rules implementing the 1997 PM_{2.5} NAAQS. The Court ordered EPA to “repromulgate these rules pursuant to Subpart 4 consistent with this opinion.” Id. at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 implementation rule addressed by the court decision, “Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}),” (73 FR 28321, May 16, 2008), promulgated New Source Review (NSR) requirements for implementation of PM_{2.5} in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 Implementation rule that address requirements for PM_{2.5} attainment and unclassifiable areas to be affected by the Court’s opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the Court’s decision.

Accordingly, EPA's approval of Wyoming's infrastructure SIP as to elements (C) or (J) with respect to the PSD requirements promulgated by the 2008 Implementation rule does not conflict with the Court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 Implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due 3 years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for PM_{2.5} is contained in EPA's October 20, 2010 rule, "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (75 FR 64864). EPA regards adoption of the PM_{2.5} increments as a necessary requirement when assessing a PSD program for the purposes of element (C).

On May 10, 2011, the State submitted revisions to Chapter 6, section 4 of the WAQSR that adopted all elements of the 2008 Implementation Rule and on May 24, 2012, the State submitted revisions to Chapter 6, Section 4 of the WAQSR that adopted all elements of the 2010 Increment Rule. These submitted revisions make Wyoming's PSD program up to date with respect to current requirements for PM_{2.5}. The May 10, 2011 submittal, which incorporated the 2008 Implementation Rule, was approved in a previous action (see 76 FR 44265). We propose to

approve the necessary portions of Wyoming's May 24, 2012 submission to reflect the 2010 PM_{2.5} Increment Rule; specifically 40 CFR part 166, paragraphs (b)(14)(i),(ii), (b)(15)(i), and paragraph (c)(1). EPA is proposing to approve the following revisions to Chapter 6, Section 4: Chapter 6, Section 4(a) Definitions of "Baseline area", "Major source baseline date", and "Minor source baseline date"; Chapter 6, Section 4(b)(i)(A)(I) Table 1 and Table 1 (1), Chapter 6, Section 4(b)(J)(v)(viii), and Section 14, as submitted on May 24, 2012. We are not proposing to act on any other portions of the May 24, 2012 submittal, including the adoption of significant impact levels (SILs) and significant monitoring concentrations (SMCs) for PM_{2.5}.

With these revisions, Wyoming's SIP-approved PSD program will meet current requirements for PM_{2.5}. As a result, EPA is proposing to approve Wyoming's infrastructure SIP for the 1997 and 2006 PM_{2.5} NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

Minor NSR

With regard to minor NSR, in this action EPA is proposing to approve Wyoming's infrastructure SIP for the 1997 and 2006 PM_{2.5} NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

Wyoming's approved minor NSR program is found in Chapter 6, section 2 of the WAQSR. EPA previously approved Wyoming's minor NSR program into the SIP (at that time as Chapter 1, section 21), and has subsequently approved revisions to the program, and at those times there were no objections to the provisions of this program. (See, for example, 47 FR 5892, February 9, 1982.) Since then, the State and EPA have relied on the State's existing minor NSR program

to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS. EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. A number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

4. **Interstate Transport:** Section 110(a)(2)(D)(i) is subdivided into four "prongs," two under 110(a)(2)(D)(i)(I) and two under 110(a)(2)(D)(i)(II). The two prongs under 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit emissions that (prong 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (prong 2) interfere with maintenance by any other state with respect to the same NAAQS. The two prongs under 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that interfere with measure required to be included in the applicable implementation plan for any other state under part C (prong 3) to prevent significant deterioration of air quality or (prong 4) to protect visibility. As noted, we are not proposing to act on Wyoming's submission to meet the requirements of section 110(a)(2)(D)(i) for the 2006

PM_{2.5} NAAQS. On May 28, 2008 (73 FR 26019), we approved Wyoming's submission to meet the requirements of section 110(a)(2)(D)(i) for the 1997 PM_{2.5} NAAQS.

5. **Interstate and International transport provisions:** Section 110(a)(2)(D)(ii) requires that each SIP shall contain adequate provisions insuring compliance with applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).

a. **Wyoming's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cited regulatory requirements included in the WAQSR Chapter 6, Section 2, Permit requirements for construction modification and operation.

b. **EPA Analysis:** Section 126(a) of the CAA requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator regarding sources violating the "interstate transport" provisions of section 110(a)(2)(D)(i). Section 115 of the CAA similarly pertains to international transport of air pollution.

WAQSR Chapter 6, Section 2, specifically paragraph (m) meets the requirements of CAA section 126(a) for the 1997 and 2006 PM_{2.5} NAAQS. Final approval of this language became effective January 30, 1995 (59 FR 60902, Nov. 29, 1994). Final approval of the renumbering of this language became effective August 27, 2004 (See 69 FR 44965, July 28, 2004).

Wyoming has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. The SIP therefore meets the requirements of 110(a)(2)(D)(ii) for the 1997 and 2006 PM_{2.5} NAAQS.

6. **Adequate resources and authority:** Section 110(a)(2)(E)(i) requires states to provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof). Section 110(a)(2)(E)(iii) requires states to “provide necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision.”

a. **Wyoming’s response to this requirement:** The State’s submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite two non-regulatory documents (e.g., Resources and Legal Authority), approved by EPA on May 31, 1972 (37 FR 10842). The State's submissions for 1997 and 2006 PM_{2.5} infrastructure requirements cite regulatory requirements included in the WAQSR Chapter 1, Section 2, Authority and the Wyoming Environmental Quality Act Articles 1 and 2 (Chapter 11, Title 35 of the Wyoming Statutes).

b. **EPA Analysis:** The provisions in Articles 1 and 2 of the Wyoming Environmental Quality Act (Chapter 11, Title 35 of the Wyoming Statutes) give the State adequate authority to carry out the SIP. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out Wyoming’s SIP requirements. The State does not rely upon any other local or regional government, agency or instrumentality for implementation of the SIP.

7. **State boards:** Section 110(a)(2)(E)(ii) requires that the state comply with the requirements respecting state boards under section 128.

a. **Wyoming's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite two non-regulatory documents (e.g., Resources and Legal Authority), approved by EPA on May 31, 1972 (37 FR 10842). The State's submissions for 1997 and 2006 PM_{2.5} infrastructure requirements cite regulatory requirements included in the WAQSR Chapter 1, Section 2, Authority and the Wyoming Environmental Quality Act Articles 1 and 2 (Chapter 11, Title 35 of the Wyoming Statutes).

b. **EPA Analysis:** Section 110(a)(2)(E)(ii) of the CAA requires that the State comply with section 128 of the CAA. Section 128 was added in the 1977 amendments to the CAA as the result of a conference agreement. Titled "State boards," it provides in relevant part:

(a) Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that—

(1) Any board or body which approves permits or enforcement orders under [this Act] shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under [this Act], and,

(2) Any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

In 1978, EPA issued a guidance memorandum recommending ways states could meet the requirements of section 128, including suggested interpretations of certain key terms in section 128.² In this notice, we additionally discuss various relevant aspects of section 128. We first note that, in the conference report on the 1977 amendments to the CAA, the conference

²Memorandum from David O. Bickart, Deputy General Counsel, to Regional Air Directors, Guidance to States for Meeting Conflict of Interest Requirements of Section 128 (Mar. 2, 1978).

committee stated, “It is the responsibility of each state to determine the specific requirements to meet the general requirements of [section 128].”³ We find that this legislative history indicates that Congress intended states to have some latitude in the specifics of implementing section 128, so long as the implementation is consistent with the plain text of the section. We also note that Congress explicitly provided in section 128 that states could elect to adopt more stringent requirements, as long as the minimum requirements of section 128 are met. As a result, we note three considerations for implementing section 128.

First, section 128 must be implemented through provisions that EPA approves into the SIP and are made federally enforceable. Section 128 explicitly mandates that each SIP “shall contain requirements” that satisfy subsections 128(a)(1) and 128(a)(2). A mere narrative description of state statutes or rules, or of a state’s current or past practice in constituting a board or body and in disclosing potential conflicts of interest, is not a requirement contained in the SIP and does not satisfy the plain text of section 128.

Second, subsection 128(a)(1) applies only to states that have a board or body that is composed of multiple individuals and that, among its duties, approves permits or enforcement orders under the CAA. It does not apply in states that have no such multi-member board or body that performs these functions, and where instead a single head of an agency or other similar official approves permits or enforcement orders under the CAA. This flows from the text of section 128, for two reasons. First, as subsection 128(a)(1) refers to a majority of members in the plural, we think it reasonable to read subsection 128(a)(1) as not creating any requirements for an individual with sole authority for approving permits or enforcement orders under the

³ H.R. Rep. 95–564 (1977), reprinted in 3 Legislative History of the Clean Air Act Amendments of 1977, 526–27 (1978).

CAA. Second, subsection 128(a)(2) explicitly applies to the head of an executive agency with “similar powers” to a board or body that approves permits or enforcement orders under the CAA, while subsection 128(a)(1) omits any reference to heads of executive agencies. We infer that subsection 128(a)(1) should not apply to heads of executive agencies who approve permits or enforcement orders.

Third, subsection 128(a)(2) applies to all states, regardless of whether the state has a multi-member board or body that approves permits or enforcement orders under the CAA. Although the title of section 128 is “State boards,” the language of subsection 128(a)(2) explicitly applies where the head of an executive agency, rather than a board or body, approves permits or enforcement orders. In instances where the head of an executive agency delegates his or her power to approve permits or enforcement orders, or where statutory authority to approve permits or enforcement orders is nominally vested in another state official, the requirement to adequately disclose potential conflicts of interest still applies. In other words, EPA thinks that SIPs for all states, regardless of whether a state board or body approves permits or enforcement orders under the CAA, must contain adequate provisions for disclosure of potential conflicts of interest in order to meet the requirements of subsection 128(a)(2).

Wyoming’s Environmental Quality Act establishes the Environmental Quality Council, a separate government body. See Wyoming Statutes 35-11-111(a). The members of the Council are appointed by the Governor and serve at the Governor’s pleasure. Among the duties of the Council are conducting hearings in any case contesting the administration or enforcement of any law, rule, regulation, standard or order issued or administered by DEQ or by any division of DEQ. *Id.* 35-11-111(a)(iii). In particular, a person subject to a DEQ order may request a

hearing before the Council. *Id.* 35-11-702(c)(ii) – (iv). The Council must also conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit authorized or required by the Environmental Quality Act. *Id.* 35-11-111(a)(iv). Under Article 2, Air Quality, and Article 8, Permits, of the Environmental Quality Act, any applicant for an air permit may petition the Council for a hearing to contest DEQ’s decision on the permit. See *id.* 35-11-208, -802. Although Article 2 does not explicitly provide for it, third parties may contest DEQ’s decision on an air permit under Wyoming Statutes section 35-11-111(a)(iv), mentioned above. *E.g., In the Matter of: Medicine Bow Fuel & Power, LLC*, No. 09-2801, at 2-3 (Wyo. Env’tl. Quality Council, Feb. 5, 2010).

Given the duties and authorities of the Council, the Council appears to be a “board or body which approves permits or enforcement orders” under the CAA.⁴ However, Wyoming’s approved SIP does not contain any enforceable provisions to satisfy the requirements of subsection 128(a)(1) as applied to the Council.⁵ In addition, Wyoming’s SIP does not contain any enforceable provisions to satisfy the requirements of subsection 128(a)(2), which applies in all states. As a result, Wyoming’s SIP does not satisfy the requirements of sections 128 and 110(a)(2)(E)(ii), and EPA proposes to disapprove Wyoming’s submissions for element (E)(ii) for the 1997 and 2006 PM_{2.5} NAAQS.

8. **Stationary source monitoring system:** Section 110(a)(2)(F) requires:

⁴ See, for example, 78 FR 32613 (May 31, 2013), for a discussion of the phrase “board or body which approves permits or enforcement orders.”

⁵ Wyoming Statutes section 35-11-111(a) does require a member of the Council that receives more than ten percent of the member’s income from any permit applicant to not act on a permit application from that applicant. However, this provision is not in Wyoming’s SIP and does not address income from persons subject to enforcement orders or persons who already hold (are “subject to”) a permit. Even if the provision were in Wyoming’s SIP, EPA does not interpret the requirement in section 128(a)(1) regarding significant income to be satisfied solely by this sort of recusal provision. See 77 FR 66398 (Nov. 5, 2012).

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection.

a. **Wyoming's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite regulatory requirements included in the 1979 WAQSR Chapter 6, Section 2, Permit requirements for construction, modification, and operation, and Chapter 7, Sections 2, and Section 23, Continuous monitoring requirements for existing sources.

b. **EPA Analysis:** In addition to the specific monitoring provisions cited by Wyoming, the SIP provides for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting. (See WAQSR Chapter 6, section 2.) Wyoming's SIP therefore meets the requirements of section 110(a)(2)(F) for the 1997 and 2006 PM_{2.5} NAAQS.

9. **Emergency powers:** Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

a. **Wyoming's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite three non-regulatory documents (e.g., Emergency

Episode Plan, Emergency Episode Contingency Plan, and a March 3, 2008 memorandum from Cynthia Cody, [EPA Region 8, Air Quality Planning Unit Chief]). The State's submissions for 1997 and 2006 PM_{2.5} infrastructure requirements cite regulatory requirements included in the WAQSR Chapter 12, Section 2, Air pollution emergency episodes and the Wyoming Environmental Quality Act, Article 1, Power of the director to issue emergency orders, (Section 35-11-115 of the Wyoming Statutes).

b. **EPA analysis:** Section 35–11–115 of the Wyoming Statutes gives the Director of the Wyoming Department of Environmental Quality (DEQ) comparable emergency powers to those in section 303 of the Act. In our 2009 guidance for infrastructure requirements for the 2006 PM_{2.5} NAAQS, we suggested that states that had monitored and recorded 24-hour PM_{2.5} levels greater than 140.4 µg/m³, using the most recent three years of data, should develop emergency episode plans for the areas with the monitored values. We also suggested that, if these levels had not been exceeded, states could certify that they had adequate general emergency authority to address PM_{2.5} episodes. In this rulemaking, we view these suggestions as still appropriate in assessing Wyoming's SIP for this element. Wyoming has not monitored any values above the 140.4 µg/m³ level for PM_{2.5} for the past three years. Since this level was not exceeded in any area of the state and the State has demonstrated that it has appropriate general emergency powers to address PM_{2.5} related episodes, the State is not required at this point to have a specific contingency plan for PM_{2.5}. The SIP therefore meets the requirements of 110(a)(2)(G) for the 1997 and 2006 PM_{2.5} NAAQS.

10. **Future SIP revisions:** Section 110(a)(2)(H) requires that SIPs provide for revision of such plan:

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii), except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this [Act].

a. **Wyoming’s response to this requirement:** The State’s submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite a non-regulatory document, Implementation Plan Reviews, approved by EPA on April 19, 1983 (48 FR 16682).

b. **EPA analysis:** The general provisions in Article 1 of the Wyoming Environmental Quality Act (Article 1, Chapter 11, Title 35 of the Wyoming Statutes) and the particular provision in Article 2 at section 35–11–202 of the Wyoming Statutes give the State sufficient authority to revise the SIP as required by section 110(a)(2)(H).

11. **Consultation with government officials, public notification, PSD and visibility protection:** Section 110(a)(2)(J) requires that each SIP “meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).”

a. **Wyoming’s response to this requirement:** The State’s submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite one non-regulatory document relative to consultation with government officials (e.g., Consultation, approved by EPA July 2, 1979 (44 FR 38473)),

one regulatory document relative to public notification (e.g., Public Notification of Air Quality, approved by EPA July 2, 1979 (44 FR 38473)) and two non-regulatory documents relative to PSD and visibility protection (Wyoming State Implementation Plan for Class I Visibility Protection and a March 3, 2008 memorandum from Cynthia Cody, [EPA Region 8, Air Quality Planning Unit Chief]). The State's submissions for 1997 and 2006 PM_{2.5} infrastructure requirements cite regulatory requirements relative to PSD and visibility protection included in the WAQSR, Chapter 6, Prevention of significant deterioration.

b. **EPA Analysis:** The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121. Furthermore, EPA previously approved portions of the Wyoming SIP meeting the requirements of CAA section 127. (44 FR 38473, July 2, 1979.)

Wyoming's SIP regulations for its PSD program were first federally-approved and made part of the SIP on September 6, 1979 (4 FR 51977). EPA has further evaluated the State's SIP-approved PSD program in section V.3, element 110(a)(2)(C) of this proposed action. As explained in that section, we propose to approve Wyoming's infrastructure SIPs for the 1997 and 2006 PM_{2.5} NAAQS with respect to the requirement in element (C) to have a permit program as required by Part C of the Act, concurrently with our proposed approval of Wyoming's submittals to adopt the PM_{2.5} increments and to regulate GHGs under the PSD program. We correspondingly propose to approve the infrastructure SIPs for the 1997 and 2006 PM_{2.5} NAAQS

with respect to the requirement in element (J) that the SIP meet the applicable requirements of Part C with respect to PSD.

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new visibility obligation “triggered” under section 110(a)(2)(J) when a new NAAQS becomes effective.

12. Air quality and modeling/data: Section 110(a)(2)(K) requires that each SIP provide for:

- (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and
- (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

a. Wyoming’s response to this requirement: The State’s submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite regulatory requirements included in the WAQSR Chapter 6, Sections 2, 4, 21 and 24.

b. EPA Analysis: Wyoming’s SIP meets the requirements of CAA section 110(a)(2)(K) for the 1997 and 2006 PM_{2.5} NAAQS. In particular, Wyoming’s PSD program requires that estimates of ambient air concentrations be based on applicable air quality models specified in Appendix W of 40 CFR part 51, and that modification or substitution of a model specified in

Appendix W must be approved by the Administrator. (See WAQSR Chapter 6, section 4(b)(iv).)

As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

13. **Permitting fees:** Section 110(a)(2)(L) requires SIPs to: require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under [title] V.

a. **Wyoming's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite regulatory requirements included in the WAQSR Chapter 6, Permit requirements for construction, modification, and operation.

b. **EPA Analysis:** Final approval of Wyoming's title V operating permit program became effective April 23, 1999 (64 FR 8523, Feb. 22, 1990). Interim approval of the program became effective February 21, 1995 (60 FR 4563, January 19, 1995). As discussed in a previous direct final rule (which received comments) for interim approval of the title V program (59 FR 48802, September 23, 1994), the State demonstrated that the fees collected were sufficient to administer the program. In addition, WAQSR chapter 6, section 2, paragraph (o) requires applicants for construction permits to pay the costs for DEQ to review and act on the permit applications. Wyoming's submission meets the requirements of section 110(a)(2)(L) for the 1997 and 2006 PM_{2.5} NAAQS.

14. **Consultation/participation by affected local entities:** Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

a. **Wyoming's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite a non-regulatory document (e.g., Intergovernmental Cooperation), approved by EPA on May 3, 1972 (37 FR 10842).

b. **EPA Analysis:** Wyoming's submittal meets the requirements of CAA Section 110(a)(2)(M) for the 1997 and 2006 PM_{2.5} NAAQS.

VI. What Action is EPA Proposing?

In this action, EPA is proposing to approve the following infrastructure elements for the 1997 and 2006 PM_{2.5} NAAQS: (A), (B), (C) with respect to minor NSR and PSD requirements, (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). EPA is also proposing to approve revisions to Chapter 6, Section 4, as submitted on May 24, 2012, which incorporate the requirements of the 2010 PM_{2.5} Increment Rule; specifically, revisions to: Chapter 6, Section 4 (a) Definitions of "Baseline area", "Major source baseline date", and "Minor source baseline date"; Chapter 6, Section 4 (b)(i)(A)(I) Table 1 and Table 1 (1), Chapter 6, Section 4 (b)(J)(v)(viii), and Section 14. EPA proposes to disapprove the section 110(a)(2)(E)(ii) infrastructure element, related to CAA 128, state boards, for the 1997 and 2006 PM_{2.5} NAAQS. Finally, in this action, EPA is taking no action on infrastructure elements (D)(i) for the 2006 PM_{2.5} NAAQS.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated August 28, 2013

Shaun L. McGrath
Regional Administrator
Region 8

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